

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UTICA MUTUAL INSURANCE
COMPANY,

Plaintiff,

v.

THE DAVID AGENCY INSURANCE,
INC.; DAVID MEILAHN; and
G.F. MANN AGENCY, LTD.,

Defendants.

Declaratory Action

No.

Judge:

04C 1206

JUDGE KENNELLY

MAGISTRATE JUDGE NOLAN

DECLARATORY COMPLAINT FOR JUDGMENT

NOW COMES the Plaintiff, UTICA MUTUAL INSURANCE COMPANY (hereinafter "UTICA") by its attorneys RUSIN MACIOROWSKI & FRIEDMAN, LTD., and for its Complaint for Declaratory Judgment against the Defendants, THE DAVID AGENCY INSURANCE, INC., DAVID MEILAHN and G.F. MANN AGENCY, LTD., and states as follows:

1. Plaintiff, UTICA, at all relevant times and material hereto was a corporation duly incorporated under the laws of New York and having its principal place of business in New York.

2. Defendant, THE DAVID AGENCY INSURANCE, INC, is a corporation duly incorporated under the laws of Illinois and having its principal place of business in Illinois. Defendant, DAVID D. MEILAHN, is a citizen of the State of Illinois. (Hereinafter, THE DAVID AGENCY INSURANCE, INC. and DAVID D. MEILAHN are referred to as "DAVID")

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FEB 18 2004

4. Defendant, G.F. MANN AGENCY, LTD., is a corporation duly incorporated under the laws of Illinois and having its principal place of business in Illinois. G.F. MANN AGENCY, LTD. is joined as a necessary party since it is the plaintiff in 00 L 00724. G. F. MANN AGENCY, LTD. will be dismissed if it agrees to be bound by the judgment herein.

5. UTICA issued a policy, number BOP 1 97 06 12, naming THE DAVID AGENCY INSURANCE, INC. a named insured effective January 30, 2000 to January 30, 2001. A copy of the insurance policy is attached and incorporated as ***Exhibit A.***

6. On July 27, 2000, an action was filed by G.F. MANN AGENCY, LTD. against THE DAVID AGENCY INSURANCE, INC., MANN/DAVID AGENCY, LLC. and DAVID MEILAHN, individually in the Circuit Court of DuPage County styled as case number 00 L 00724 (hereinafter "underlying lawsuit"). A copy of the complaint is attached and incorporated as ***Exhibit B.***

7. The complaint in the underlying lawsuit alleges willful, illegal and/or criminal violations not covered by the policy and/or excluded thereunder. The complaint does not contain any allegations covered under the policy.

8. On September 8, 2000, UTICA issued a letter to DAVID denying that it owed any duty to indemnify or defend in the underlying lawsuit under policy number BOP 1 97 06 12 or otherwise. The letter specifically reserved all rights under the policy. In the reservation of rights of September 8, 2000 and prior to defending under the reservation of rights, DAVID was advised that THE G. F. MANN AGENCY was seeking relief for damages not insurable or not insured, and/or excluded from coverage. DAVID was further advised that if the allegations in the suit against DAVID were proven, then there would be no coverage under the Utica policy. A copy of the December 8, 2000 letter is attached and incorporated as ***Exhibit C.***

9. On January 14, 2004, the underlying litigation resulted in a judgment entered on a jury's verdict against DAVID AGENCY INSURANCE, INC. and DAVID MEILAHN. The jury's verdict totaled \$987,087.02 comprising of \$525,000 for punitive damages and \$462,087.02 for other compensatory damages.

10. DAVID has sought and continues to seek to have UTICA defend and indemnify DAVID with regard to the underlying lawsuit pursuant to policy BOP 1 97 06 12.

11. In light of the alleged criminal violations, willful violations, punitive damages and otherwise, UTICA denies and continues to deny that it owes DAVID any defense or indemnification under the policy.

12. UTICA reiterated its position in a letter dated January 28, 2004. A copy is attached and incorporated as *Exhibit D*.

13. That Illinois public policy prohibits the insuring of punitive damages. In addition, the allegations contained in the complaint are alleged to be illegal. The plaintiff's request for relief includes statutory damages which are punitive in nature. Illinois law prohibits the insuring against punitive damages arising out of one's own conduct. *See Crawford Laboratories v. St. Paul Insurance*, 306 Ill.App.3d 538 (1999); *Beaver v. Country Mutual Ins.*, 95 Ill.App.3d 1122 (1981).

14. As a result of the policy, exclusions, definitions and the applicable law, UTICA is entitled to a declaration that it owes neither defense nor indemnification to the defendants, DAVID, with respect to the underlying lawsuit under policy BOP 1 97 06 12.

15. There is at present a dispute as to whether the Plaintiff, UTICA, is obligated to defend or indemnify the Defendant, DAVID, with regard to the lawsuit in question and its

appeal. By reason of the foregoing, an actual and justifiable controversy exists between the parties and each of them, which may be determined by a judgment or order of this Court.

WHEREFORE, the Plaintiff, UTICA MUTUAL INSURANCE COMPANY, demands judgment as follows:

- (1) A declaration by this Court that UTICA has no duty to defend DAVID D. MEILAHN in the underlying lawsuit and appeal of same;
- (2) A declaration by this Court that UTICA has no duty to defend THE DAVID AGENCY INSURANCE, INC. in the underlying lawsuit and appeal of same;
- (3) A declaration by this Court that UTICA has no duty to indemnify DAVID D. MEILAHN in the said lawsuit and appeal of same;
- (4) A declaration by this Court that UTICA has no duty to indemnify THE DAVID AGENCY INSURANCE, INC., in the said lawsuit and appeal of same;
- (5) Such other relief, legal or equitable, as this Honorable Court may deem just and proper.

RUSIN MACIOROWSKI & FRIEDMAN, LTD.

By:



Gregory G. Vacala, one of the attorneys for
the Plaintiff, Utica Mutual Insurance Company

Gregory G. Vacala
ARDC # 6184543
RUSIN MACIOROWSKI & FRIEDMAN, LTD.
10 S. Riverside Plaza, Suite 1530
Chicago, IL 60606
(312) 454-5110
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**SEE CASE
FILE FOR
EXHIBITS**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

CLERK
U.S. DISTRICT COURT

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): Utica Mutual Insurance Company

**Defendant(s): The David Agency Insurance Inc;
David Meilahn and G.F. Mann Agency, Ltd.**

County of Residence:

County of Residence:

Plaintiff's Atty: Gregory G. Vacala
Rusin Maciorowski &
Friedman
10 S. Riverside Plaza, Suite
1530, Chicago, IL 60606
(312_454-5110)

Defendant's Atty: Tracy E. Stevenson, Esq.
Chuhak & Tecson, P.C.
225 W. Washington Street,
Suite 1300, Chicago, Illinois
312-444-9300

II. Basis of Jurisdiction:

4. Diversity (complete item III)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- 2 Citizen of Another State
Defendant:- 1 Citizen of This State

04C 1206

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

110 Insurance

VI. Cause of Action:

28 U.S.C. 1332

JUDGE KENNEDY
MAGISTRATE JUDGE NOLAN
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VII. Requested in Complaint

Class Action: No

Dollar Demand: **declaratory judgment** /in excess of \$987,087.00.

Jury Demand: No

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature: _____

Date: _____

2/17/04

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

FILED FOR DOCKETING

EASTERN DIVISION

In the Matter of

Utica Mutual Insurance Co. v. The David Agency
Insurance, Inc. David Meilahn and G.F. Mann Agency, Ltd.

U.S. DISTRICT COURT


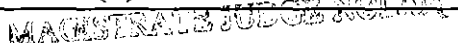
Case Number: 04C

1206

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Plaintiff

JUDGE KENNEDY

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME Gregory G. Vacala		NAME	
FIRM Rusin Maciorowski & Friedman		FIRM	
STREET ADDRESS 10 S. Riverside Plaza, Suite 1530		STREET ADDRESS	
CITY/STATE/ZIP Chicago, Illinois 60603		CITY/STATE/ZIP	
TELEPHONE NUMBER 312-454-5110	FAX NUMBER 312-454-4454	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
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